

RECORDATION NO. 21899-C FILED

NOV 15 '05 2-34 PM

SURFACE TRANSPORTATION BOARD

ALVORD AND ALVORD  
ATTORNEYS AT LAW  
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SUITE 301  
WASHINGTON, D.C.

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

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OF COUNSEL  
URBAN A. LESTER

November 15, 2005

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Assignment of Lessor's Interest in Lease, dated as of December 23, 2003, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Memorandum of Equipment Lease previously filed with the Board under Recordation Number 21899.

The names and addresses of the parties to the enclosed document are:

Assignor: Manufacturers and Traders Trust Company  
(successor in interest to Allfirst Bank)  
25 South Charles Street  
Baltimore, MD 21201

Assignee: Progress Rail Services Corporation  
1600 Progress Drive  
Albertville, Alabama 35950

Mr. Vernon A. Williams  
November 15, 2005  
Page 2

A description of the railroad equipment covered by the enclosed document is:

442 boxcars within the series CNW 716000 - CNW 716499 as more particularly set forth in the equipment schedule attached to the document.

A short summary of the document to appear in the index is:

Assignment of Lessor's Interest in Lease.

Also enclosed is a check in the amount of \$33.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/anm  
Enclosures

**ASSIGNMENT OF LESSOR'S INTEREST IN LEASE**

NOV 15 '05

2-34 PM

**THIS ASSIGNMENT OF LESSOR'S INTEREST** **SUPPLEMENTAL TRANSPORTATION BOARD**  
("Agreement") is made as of this 23<sup>rd</sup> day of December, 2003 between  
**MANUFACTURERS AND TRADERS TRUST COMPANY** (the "Assignor"), and  
**PROGRESS RAIL SERVICES CORPORATION** (the "Assignee").

**RECITALS**

A. Seller is the owner of 442 70-ton XM used boxcars, more specifically described in Schedule A attached hereto and made a part hereof (the "Railcars").

B. The Assignor, successor by merger to Allfirst Bank (f/k/a The First National Bank of Maryland), as assignee of Mellon Leasing Corporation ("Mellon"), is the lessor under that certain Lease of Railroad Equipment dated November 2, 1998 (the "Lease") by and between Mellon and Union Pacific Railroad Company (the "Lessee").

C. The Assignor has, pursuant to the Purchase and Sale Agreement made as of December 23, 2003 (the "Agreement of Sale"), sold to the Assignee all of the Assignor's right, title and interest in and to the Railcars.

D. In connection with such sale of the Railcars, Assignor desires to assign to the Assignee, subject to the Reserved Rights (as hereinafter defined), all of the Assignor's right, title and interest in and to and obligations under the Lease, which Assignee expressly desires to assume.

**AGREEMENTS**

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt of which is hereby acknowledged, the Assignor and the Assignee agree as follows:

I. **Assignment and Assumption.** The Assignor hereby assigns to the Assignee all of the Assignor's right, title and interest in and to and obligations under the Lease. Notwithstanding anything to the contrary herein, the following rights of Assignor (the "Reserved Rights") are excluded from the assignment: any right, title and interest of Assignor in and to (i) all rental payments due on the Railcars through and including December 22, 2003, (ii) any proceeds of a Railcar that has suffered a Casualty Occurrence (as defined in the Lease) prior to December 23, 2003, (iii) each and every indemnity or other payment and the right to payment of all indemnities of the Lessee or otherwise which may be payable to Assignor arising from events occurring prior to December 23, 2003, (iv) all liability insurance proceeds which are now or hereafter payable to Assignor arising from or in connection with its interest in the Railcars and (v) the right to enforce payment of any of the foregoing. Notwithstanding Assignor's retention of the Reserved Rights, Assignor shall not be entitled to exercise any of the remedies available to the "Lessor" under the Lease with

respect to any non-payment relating to the Reserved Rights other than a suit for monetary damages and actions to enforce any judgment obtained for such damages against general assets of the Lessee (excluding the Railcars and the Lessee's rights to use the same pursuant to the terms of the Lease). Assignee hereby accepts the assignment of such right, title and interest of, and assumes the obligations of, Assignor under the Lease, subject to the Reserved Rights. Assignee shall not release or modify any of the Reserved Rights.

2. **Additional Instruments.** The Assignor shall execute and deliver such further instruments and take such actions as shall be reasonably required in order to carry out the transactions contemplated by this Agreement.

3. **Miscellaneous Provisions.**

(a) **Entire Agreement.** This Agreement, the Agreement of Sale, the Notice (as defined in the Agreement of Sale), and the Bill of Sale (as defined in the Agreement of Sale) (collectively, the "Transaction Documents") comprise the complete understanding of the parties and there are no understandings, either written or oral, except as specifically set forth in the Transaction Documents. No changes may be made in this Agreement unless specifically reduced to writing and accepted by both parties. All prior negotiations and understandings of the parties are deemed merged into this Agreement and the other Transaction Documents.

(b) **Amendment and Waiver.** This Agreement may be amended, or any portion of this Agreement may be waived, provided that such amendment or waiver shall be in writing, executed by the parties to which any particular provision specifically relates and all such amendments and waivers made shall be binding upon the parties. No course of dealing between or among any persons having any interest in this Agreement shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any person under or by reason of this Agreement.

(c) **Inurement to Benefit of Assigns.** All of the terms and provisions of this Agreement shall be binding upon, apply and inure to the benefit of the parties, their respective successors and assigns.

(d) **Severability.** Each of the terms and provision of this Agreement is and is deemed to be severable, in whole or in part, and, if any term or provision or their application in any circumstance should be invalid, illegal or unenforceable, the remaining terms and provisions or their application, to circumstances other than those as to which it is held invalid, illegal or unenforceable, shall not be affected and shall remain in full force and effect.

(e) **Exhibits and Schedules.** Schedule A attached to this Agreement is incorporated and made a part of this Agreement by reference.

(f) **Paragraph Headings.** All paragraph and subparagraph headings are for convenience only and do not in any way limit to construe the contents of the paragraphs.

(g) **Rights and Remedies.** All rights and remedies granted any of the parties under this Agreement shall be cumulative.

(h) **Rights and Obligations of Parties.** This Agreement is given pursuant to the Agreement of Sale and neither expands upon nor limits the rights and obligations of the parties under the Agreement of Sale.

(i) **Governing Law.** The law of the State of New York shall govern all questions concerning the construction, validity and interpretation of this Agreement and the performance of the obligations imposed by this Agreement.

(j) **Construction.** As used herein, any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and the singular shall include the plural. This Agreement and all instruments executed to consummate the transactions contemplated shall be deemed to have been mutually negotiated, prepared and drafted, and in the event of its interpretation no consideration shall be given to the issue of which party prepared, drafted or requested any term, condition or agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Assignor and the Assignee have executed this Agreement under seal by its duly authorized officers as of the day and year first written above.

MANUFACTURERS AND TRADERS  
TRUST COMPANY ("Assignor")

By: Mohammad F. Jishi (SEAL)  
Name: Mohammad F. Jishi  
Title: Vice President

PROGRESS RAIL SERVICES  
CORPORATION ("Assignee")

By: John R. Grace (SEAL)  
Name: JOHN R. GRACE  
Title: SR. VICE PRESIDENT

STATE OF Maryland)  
CITY OF Baltimore) SS:

On this 23<sup>rd</sup> day of December, 2003, before me, a Notary Public of the City and State aforesaid, personally appeared Mohannad F. Jishi, to me personally known, who being by me duly sworn, says that he is a Vice President of Manufacturers and Traders Trust Company, a New York banking corporation, that the seal affixed to the foregoing instrument is the seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

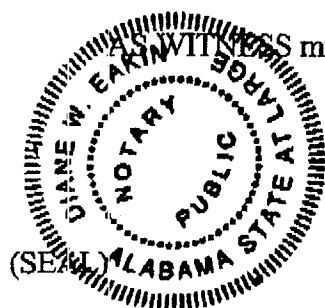
AS WITNESS my hand and notarial seal

LaShawn R. Jenkins  
Notary Public

My commission expires: 5/1/06

STATE OF ALABAMA, COUNTY OF MARSHALL, TO WIT:

I HEREBY CERTIFY, that on this 30<sup>th</sup> day of December, 2003, before me, personally appeared John R. Grace, to me personally known, who being by me duly sworn, says that he is the Senior Vice President of Progress Rail Services Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



AS WITNESS my hand and Notarial Seal.

Diane W. Eakin

Notary Public

My Commission Expires: June 30, 2005

SCHEDULE A

DESCRIPTION OF RAILCARS

442 50' 6" 70 ton Class "XM" boxcars built for FMC Corporation in 1978 and bearing Road Numbers CNW 716000 to 716499 but specifically excluding numbers 716010, 716021, 716035, 716088, 716090, 716133, 716171, 716227, 716234, 716258, 716321, 716322, 716339, 716345, 716357, 716398, 716437, 716463, 716497, 716498, 716499, 716005, 716031, 716043, 716044, 716092, 716143, 716151, 716157, 716224, 716414, 716492, 716002, 716007, 716016, 716020, 716038, 716046, 716074, 716103, 716104, 716115, 716124, 716126, 716127, 716131, 716138, 716142, 716162, 716172, 716197, 716313, 716318, 716329, 716367, 716408, 716430 and 716495



**CERTIFICATION**

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: \_\_\_\_\_

11/15/05



\_\_\_\_\_  
Robert W. Alvord

## Surface Transportation Board

Office of Proceedings  
1925 K Street, NW  
Washington, DC 20423-0001

November 15, 2005

Robert W. Alvord  
Alvord and Alvord  
1050 Seventeenth Street, N.W.  
Suite 301  
Washington, DC 20036

Dear Sir or Madam:

The enclosed document was recorded pursuant to the provisions of 49 U.S.C. 11301 and 49 CFR 1177, on November 15, 2005 , at 02:34 PM and assigned recordation number 21899-C.

Sincerely yours,

Regena Smith-Bernard  
Section of Administration